

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AA'SHAHLA AL-ALI,

Plaintiff,

Case No. 18-cv-12687

v.

Paul D. Borman
United States District Judge

Mona K. Majzoub
United States Magistrate Judge

KEN GARFF AUTOMOTIVE GROUP,
And COLLEEN COLEMAN,

Defendants.

**OPINION AND ORDER: (1) ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION (ECF #16); (2) CONVERTING
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND
COMPEL ARBITRATION (ECF #11) TO A MOTION FOR SUMMARY
JUDGMENT; AND (3) GRANTING DEFENDANTS' MOTION (ECF #11)**

Now before the Court is the Report and Recommendation of Magistrate Judge Mona K. Mazjoub (ECF #16) recommending that the Court convert Defendants' Motion to Dismiss Plaintiff's Complaint and Compel Arbitration (ECF #11) to a Motion for Summary Judgment and grant said Motion. No objections were filed to the Report and Recommendation.

The Magistrate Judge recommends that the instant Motion be converted to a Motion for Summary Judgment under Federal Rule of Civil Procedure 12(d) because Defendants attached as an exhibit an arbitration agreement, executed by Plaintiff May 18, 2017, a matter outside the pleadings. (Report and Recommendation, PgID 289, ECF #16.) Plaintiff had a full and fair opportunity to review and address all of Defendants' arguments in the Motion, including their contention that this dispute is subject to the arbitration agreement. *See Wilkes v. Nat'l Credit Union Admin. Bd.*, No. 15-CV-11389, 2015 WL 7889049, at *1 n.1 (E.D. Mich. Dec. 4, 2015) (citing *Shelby Cty. Health Care Corp. v. S. Council of Indus. Workers Health & Welfare Trust Fund*, 203 F.3d 926, 931-32 (6th Cir. 2000)). The Court will therefore consider the Motion as a Motion for Summary Judgment under Rule 56(c).

In her Response, Plaintiff requested that Defendants bear the cost of the arbitration. (Pl.'s Resp., PgID 131, ECF #13.) The Magistrate Judge found that Plaintiff should bear her portion of the fees, as the arbitration is to occur according to the American Arbitration Association's ("AAA") Employment Arbitration Rules, which require Defendants to pay \$1,900 of the \$2,200 filing fee, the entire case management fee, and the arbitrator's fees and expenses. (Report and Recommendation, PgID 293.) Therefore, the Court agrees with the Magistrate Judge

that Plaintiff must bear her share of the fees under the AAA rules.

Second, Plaintiff requested provisional relief under Section 8 of the Michigan Arbitration Act, which authorizes a court “for good cause shown . . . [to] enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding.” M.C.L. § 691.1688. (Pl.’s Resp., PgID 131.) Plaintiff has not shown good cause for provisional relief, and that request will also therefore be denied, as recommended.

Lastly, Plaintiff requested that the Court stay this matter while the arbitration is pending. (*Id.*) The Magistrate Judge recommended that the Court deny this relief, because matters are stayed only when there are outstanding claims that are not subject to arbitration. (Report and Recommendation, PgID 294.) That is not the case in this matter – all of Plaintiff’s claims are subject to arbitration, so it is appropriate to dismiss the Complaint in its entirety. *See Hensel v. Cargill, Inc.*, 198 F.3d 245 (6th Cir. 1999). Thus, the Court will adopt the Magistrate Judge’s recommendation to dismiss the Complaint.

Having reviewed the Report and Recommendation and there being no timely objections under 28 U.S.C. § 636(b)(1) and Eastern District of Michigan Local Rule 72.1(b), the Court ADOPTS the Magistrate Judge's Report and Recommendation (ECF #16), converts Defendants' Motion to Dismiss Plaintiff's Complaint and Compel Arbitration under Rule 12(d) to a Motion for Summary Judgment, and GRANTS Defendants' Motion for Summary Judgment under Rule 56 in its entirety (ECF #11).

IT IS SO ORDERED.

Dated: February 22, 2019

s/Paul D. Borman
Paul D. Borman
United States District Judge